

<sup>2</sup> The Board notes that, following the December 11, 2020 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On September 28, 2020 appellant, then a 61-year-old postal collect and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2020 she injured her left hand when she tripped and fell out of a truck that she was cleaning and sanitizing while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

In support of her claim, appellant submitted a September 19, 2020 patient visit information which indicated that appellant was treated by Dr. Benjamin Miner, an emergency medicine specialist, and diagnosed as having a finger sprain.

In a duty status report (Form CA-17) of even date, Dr. Miner noted that appellant reported that she fell out of a vehicle onto her hand on July 29, 2020. He diagnosed left hand/finger contusion due to injury. Dr. Miner advised that appellant could resume full-time, regular work as of the date of his examination.

OWCP, in a development letter dated November 4, 2020, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion to provide further details regarding the circumstances of her claimed injury. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how the reported work incident caused or aggravated her medical condition. It afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated December 11, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the July 29, 2020 incident occurred in the performance of duty, as alleged. It further found that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the alleged employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>9</sup> The employee has not met his or her burden of proof in establishing the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>10</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>11</sup> An employee's statements alleging that an injury occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>12</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>13</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

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<sup>5</sup> *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>10</sup> *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

<sup>11</sup> *See L.B.*, Docket No. 19-1799 (issued March 11, 2020); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>12</sup> *See M.C., id.*; *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>13</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish that an incident occurred in the performance of duty on July 29, 2020, as alleged.

Appellant indicated in her September 28, 2020 claim form that she injured her left hand on July 29, 2020 when she tripped and fell out of a truck that she was cleaning and sanitizing at work. Additionally, Dr. Miner's September 19, 2020 Form CA-17 report related a history of injury that on July 29, 2020 appellant fell out of a vehicle onto her hand, and diagnosed left hand/finger contusion due to injury. As well, appellant's supervisor acknowledged on the reverse side of the claim form that appellant was injured in the performance of duty.

The Board, thus, finds that appellant has met her burden of proof to establish that the July 29, 2020 employment incident occurred in the performance of duty, as alleged.<sup>15</sup> Appellant provided consistent statements on her claim form and in her medical records, which establish that the alleged employment incident occurred on July 29, 2020.<sup>16</sup> She has provided a single account of the mechanism of injury that has not been refuted by any evidence in the record.<sup>17</sup> On the reverse side of appellant's claim form the employing establishment acknowledged that appellant was injured in the performance of duty on July 29, 2020. As stated above, an employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>18</sup> The Board therefore finds that appellant has established that the July 29, 2020 employment incident occurred in the performance of duty, as alleged.

The Board further finds that appellant has established a left finger contusion. Dr. Miner recounted appellant's history of injury where he reported that she fell out of a vehicle onto her hand on July 29, 2020. He diagnosed left hand/finger contusion due to the injury. OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.<sup>19</sup> As the evidence of record establishes diagnosed visible

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<sup>14</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>15</sup> *See A.B.*, Docket No. 20-1567 (issued April 30, 2021); *O.G.*, Docket No. 20-0399 (issued July 20, 2020); *S.S.*, Docket No. 19-1815 (issued June 26, 2020).

<sup>16</sup> *G.H.*, Docket No. 19-1971 (issued May 20, 2020); *S.B.*, Docket No. 19-1499 (issued January 27, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 12.

<sup>19</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). *See also A.J.*, Docket No. 20-0484 (issued September 2, 2020).

injuries, the Board finds that appellant has met his burden of proof to establish a left lower leg contusion causally related to the accepted employment July 29, 2020 incident.<sup>20</sup> The case will, therefore, be remanded for payment of medical expenses and any attendant disability.

The Board further finds, however, that appellant has not established additional medical conditions causally related to the July 29, 2020 employment injury. The September 19, 2020 patient visit information indicated that Dr. Miner diagnosed finger sprain, but did not offer an opinion as to whether the diagnosed condition was caused by the July 29, 2020 employment injury. The Board has held that medical evidence, which does not offer an opinion regarding the cause of an employee's condition, is of no probative value on the issue of causal relationship.<sup>21</sup> The Board finds, therefore, that this evidence is insufficient to establish appellant's burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish that an incident occurred in the performance of duty on July 29, 2020, as alleged. The Board also finds that appellant has met her burden of proof to establish a left finger contusion causally related to the accepted July 29, 2020 employment incident. The Board further finds, however, that appellant has not met her burden of proof to establish additional medical conditions causally related to the accepted July 29, 2020 employment injury.

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<sup>20</sup> See *A.J., id.*; see also *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

<sup>21</sup> See *C.W.*, Docket No. 20-0965 (issued February 5, 2021); *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: September 14, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board